REPORT

Of the Minister of Justice upon the Statutes of the Legislative Assembly of the Province of British Columbia passed during the Session of 1919.

By Command.

J. D. MACLEAN,
Provincial Secretary.

Provincial Secretary's Office,
April 27th, 1920.

P.C. 746.

Certified Copy of a Report of the Committee of the Privy Council, approved by His Excellency the Administrator on the 10th April, 1920.

The Committee of the Privy Council have had under consideration the attached report from the Minister of Justice, dated 31st March, 1920, upon the Statutes of the Legislature of British Columbia, passed in the ninth year of His Majesty's reign, 1919, and received by the Secretary of State for Canada on 12th April, 1919.

The Minister states that he is of the opinion that these Acts may be left to such operation as they may have, subject to the comments expressed in the said report.

The Committee concur in the opinion of the Minister of Justice and advise that a copy hereof and of the accompanying report, if approved, be transmitted to His Honour the Lieutenant-Governor of British Columbia for the information of his Government.

All which is respectfully submitted for approval.

RODOLPHE BOUDREAU,
Clerk of the Privy Council.

His Honour the Lieutenant-Governor of British Columbia.

DEPARTMENT OF JUSTICE, CANADA.

OTTAWA, March 31st, 1920.

To His Excellency the Governor-General in Council:

The undersigned has had under consideration the Statutes of the Legislature of British Columbia, passed in the ninth year of His Majesty's reign, 1919, and received by the Secretary of State for Canada on 12th April last, and he is of the opinion that these Acts may be left to such operation as they may have, subject to the following comments:—

Chapter 22, intituled "An Act to amend the 'Dolly Varden Mines Railway Act.'" This Act, upon the narrative that the Dolly Varden Mines Company was empowered by local Statute, chapter 53 of 8 George V. 1917, to construct, maintain, and operate a railway from the Wolf Group of Mineral Claims to Alice Arm, provided the construction were completed before 31st December, 1918; that the railway had been only partially constructed; that the cost of construction had not been paid, and that it was expedient to provide for the payment and for an extension of time for completion, proceeds to enact that the real and personal property and rights described in the Schedule of the Act, which appears to be intended to comprise all property, real and personal, of the Dolly Varden Mines Company within the Province of British Columbia, shall be charged, in favour of the Taylor Engineering Company, Limited, with the actual cost of construction of the railway; that the cost shall be ascertained by one of the Justices of the Supreme Court of the Province nominated by the Provincial Minister of Railways; that within twenty-five days from the date of the Judge's report the Dolly Varden

Mines Company shall elect whether it will pay the Taylor Engineering Company the amount found; and that if the Mines Company within the twenty-five days aforesaid pay in full so much of the actual cost of construction as shall consist of wages and within one month the full balance of the cost, the premises shall be disencumbered from the charge created by the Act, and that the time for completion of the railway shall be extended to 31st December, 1920. On the other hand, it is provided that if within the times limited the Mines Company fail to pay, then at the expiration of a month from the date of the report the premises shall vest in and become the property of the Engineering Company with a like extension of time for the railway-construction, subject, however, to certain enumerated charges, and that the full amount of the actual cost of construction so ascertained shall be paid, in the manner provided by the Act, by the latter Company to a trustee for the persons entitled; the Engineering Company, moreover, to satisfy the Minister of Railways of its ability to operate the property; all rights and privileges of the Engineering Company to cease if it fail to comply with these conditions. The net proceeds of the property in the hands of the Engineering Company are to be applied in the manner provided by the Act for payment of the statutory charges, and there is provision for inquiry for the purpose of ascertaining whether the premises are being operated with due regard to the liquidation of the charges, and, if found necessary and just, for the appointment of a receiver. The second charge is concerned with a mortgage of George Wingfield, President of the Goldfield Mines Company, of the principal sum of $150,000, and it is provided that after the expiration of eighteen months from the date when the premises shall become vested in the Engineering Company the said Wingfield shall be entitled to exercise the ordinary rights and powers of a mortgagee. The final charge to which the property is made subject in the event of its acquisition by the Engineering Company is a floating charge in favour of the Mines Company for the amount of its actual expenditure for the construction of the railway, purchase price, and development of the premises, not to exceed $613,000; and it provided that after satisfaction of the other charge the net proceeds shall be devoted in equal moities to the satisfaction of the contractors' profit and of the said charge in favour of the Mines Company.

On 17th May last an application for disallowance was received on behalf of the said George Wingfield, alleging that the Act contained provisions prejudicial to his interest, but it becomes unnecessary to consider this application, because it was about a month later withdrawn by Mr. Wingfield.

On 5th January last the undersigned received a telegram from Mr. R. T. Elliott, of Vancouver, requesting disallowance upon grounds alleging that the Act was *ultra vires* of the Legislature. Correspondence ensued as follows:—

Telegram of 4th January, 1919, from Mr. R. T. Elliott, solicitor for the Mines Company, to the Minister of Justice:

Letter of 7th January from the Deputy Minister of Justice to Mr. Elliott:

Two telegrams from Mr. Elliott to the undersigned of 15th January:

Letter of 16th January from the Deputy Minister of Justice to Mr. Elliott:

Telegram of 16th January from the Sun Publishing Co., Ltd., of Vancouver, to the Deputy Minister of Justice:

Mr. Newcombe's telegram in reply of 17th January:

Telegram of 12th February from Mr. Elliott to the Minister of Justice:

Mr. Newcombe's acknowledgment of the same date:

Telegram of 12th February from R. J. Cromie, of the Vancouver *Sun*, to the Minister of the Interior:

Mr. Newcombe's reply of 14th February:

Telegram of 16th February from Mr. Elliott to the Minister of Justice:

Mr. Newcombe's reply of 17th February:

Telegram of 17th February from Mr. Cromie to Mr. Newcombe:

Letter of 16th February from Mr. Elliott to the Minister of Justice, received 23rd February:

Letter of 17th February from Mr. Elliott to the Minister of Justice, enclosing copy of the report of Mr. Justice Clement, who was named by the Provincial Minister of Railways under the provisions of the Statute to ascertain the actual cost of construction of the railway.

Copy of the above correspondence is submitted herewith.

On 2nd February the Deputy Minister of Justice wrote the Attorney-General of British Columbia, enclosing for his consideration and any observations which he desired to submit for the information of the undersigned copies of the three telegrams which had then been received from Mr. Elliott; and he wrote the Attorney-General again on 12th February, enclosing copy of another telegram from Mr. Elliott, received in the interval.

On 2nd March the Attorney-General wrote the undersigned in reply, enclosing also copy of a memorandum prepared by the Taylor Engineering Company; copies of the Attorney-General's letter and of the said memorandum are submitted herewith.

It will be perceived that the present application for disallowance submitted on behalf of the Mines Company is concerned solely with grounds alleging in emphatic terms the invalidity of the legislation for the reason that the enactment of it was incompetent to the local Legislature, because it conflicts with the Dominion "Winding-up Act"; relates to bankruptcy and insolvency; derogates from the authority of the Governor in Council to appoint the Judges under section 96 of the "British North America Act, 1867," and is so far a complete nullity as to be incapable of having effect either inherently or by acquiescence or ratification.

On the other hand, the Attorney-General argues in effect that the Statute is concerned merely with property or civil rights or private and local matters in the Province, and does not entrench upon any Dominion power, and he maintains the authority of the Legislature to name a Commissioner for the purpose of ascertaining the cost of construction of the railway, as provided by the Act. He points out that the occasion of the legislation was an application by the Mines Company for extension of its powers to construct the railway upon a public highway, these having reached their statutory limit, and that it was in the circumstances not only within the authority, but even the duty of the Legislature to see that equitable provisions were made, and he submits that the Court is the proper tribunal for determining Mr. Elliott's objections.

It appears from the memorandum submitted by the Taylor Engineering Company that the Mines Company, as well as all other interested parties, was given full opportunity of hearing, and was duly heard, before a Select Committee of the Legislature appointed to investigate the dispute between the Dolly Varden Mines Company and the Taylor Engineering Company, Limited, and that the Committee reported substantially in favour of the legislation, which was thereupon after debate passed by the Legislative Assembly, as it is said, unanimously.

It is represented by Mr. Elliott in his telegram of 15th January that "forcible possession has been taken of all the assets and properties of the Dolly Varden Mines Company, and valuable assets have been appropriated and converted into money and constant wastages of assets are occurring. The titles to the properties have been transferred to some nominal purchaser, and Taylor Company, Limited, is in hands of trustee for creditors. Under these circumstances it is respectfully submitted that to suggest the taking of legal proceedings by Dolly Varden Mines Company is to make a mockery of justice," and he observes that the Company would be at a disadvantage in the litigation by reason of its resources having been taken out of its hands and appropriated to the adversary, from whom it is also suggested it would be impossible to recover damages or costs.

These considerations do not, however, in the opinion of the undersigned, justify the exercise of the power of disallowance upon any debatable question of legislative authority; it is manifest that if the Statute be *ultra vires*, as is so unhesitatingly affirmed on behalf of the Mines Company, it could not legally operate to justify or bring about the condition of affairs of which the Company complains; because, upon the assumption that the Company's corporate capacity continues, it has the right to resort to the judicial tribunals, which would afford a mandatory remedy against compulsory proceedings which have no legal sanction; and, on the other hand, if the Company be in difficulties because of the expiry of statutory powers affecting its constitution, that is a condition not attributable to the Act under consideration.

In these circumstances the undersigned does not consider it necessary to express an opinion upon the questions of constitutional authority which the correspondence on behalf of the Mines Company suggests, seeing that these questions are strongly maintained in the affirmative by the Attorney-General on behalf of the local Government. He considers that the questions so involved in this application may, as intimated to the Company's solicitor by the Deputy Minister of Justice on 7th January last, be "more appropriately determined by the judicial tribunals than by the executive in the exercise of the power of disallowance."

There is, however, another aspect of the case not involved with any question of constitutional validity.

The Mines Company was incorporated by the authorities of the State of Delaware, in the United States of America; it appears to have acquired certain mining property in the Province of British Columbia, and by local Act, chapter 53 of 1917, the power to construct and operate a railway for use in connection with the operation of the mines; this property, or some of it, was acquired from Daniel W. Cameron and part only of the purchase price has been paid; the property had been mortgaged in favour of George Wingfield, of the Goldfields Consolidated Mines Company, and the mortgage was outstanding; the Mines Company had contracted with the Taylor Engineering Company for the construction of the railway; considerable work had been done under this contract, but, the Mines Company having failed in its obligations, the Engineering Company was unable to complete its contract; work was stopped, and by the provisions of the said chapter 53 of 1917 the Mines Company not having its railway ready for operation before 31st December, 1918, its powers to construct and operate the railway became null and void. The Mines Company in these circumstances applied to the Legislature for renewal and extension of its former powers. It was, of course, quite competent to the Legislature to grant or to refuse this application, and, if granted, to impose reasonable conditions. The Act which resulted cannot, however, be regarded as an extension upon terms consequent upon the application of the Mines Company, because, in the event of failure of the Mines Company to discharge within a limited time the obligations in connection with the construction of the railway, it is provided that the entire property of the Mines Company in the Province, including both its mines and the railway, shall pass to the Taylor Engineering Company for the purposes provided by the Act. The situation as it stood when the Bill was under consideration by the Legislature was one which could conveniently have been considered by the judicial tribunals, which had undoubted jurisdiction to declare the respective rights of the vendor, mortgagee, and contractor, and to adjudge such remedies for recovering all the amounts payable by Mines Company as were justified by the facts and circumstances of the case. The Legislature, nevertheless, put itself in the position of the competent Court, and undertook to regulate the situation by way of a legislative measure. In the view of the undersigned this was an objectionable method of procedure, even if the power of the Legislature be not questioned. The declaration of charges and directions for the realization of property for discharge of existing liabilities are effected by judicial proceedings constitutionally entrusted to the Courts, and it is the opinion of the undersigned not desirable that the Legislature should assume the functions of a Court of justice.

The undersigned finds it unnecessary, however, to determine whether the proceedings of the Assembly were justified, either by the special circumstances of the case or by the equity of the measure which it adopted. It is represented that not only the Engineering Company, but also Mr. Cameron, the vendor, and Mr. Wingfield, the mortgagee, are opposed to the disallowance of the Act. Moreover, it was on 29th March, 1919, that the Act was assented to, and it was not until 4th January last that the undersigned received any intimation of complaint from the Mines Company. It is represented that in the interval steps had been taken under the provisions of the Act, and that the property of the Mines Company had been taken out of its hands and presumably interests have been acquired upon the foundation of the Statute. It may be observed that a period of at least twenty-five days from the date of the Judge's report was allowed for the Mines Company to elect whether it would pay to the Taylor Engineering Company the amount of the actual cost of construction, and so not only to retain its property, but also to acquire an extension of time for the construction of the railway, by providing for the discharge of its liabilities to the Engineering Company; and it would appear from the correspondence submitted that the amount has not been paid, although the cost of construction was ascertained and reported by consent so long ago as 22nd April last. In these circumstances the delay in submitting any objection suggests that the provisions of the Statute may not at the time have been regarded as unsatisfactory, and in this connection it may be reiterated that the ground for disallowance which is prominently put forward is that of legislative incompetence. But, whatever may have been the reasons accounting for the delay of the Mines Company in submitting its complaint, the undersigned apprehends that, upon just and equitable principles, where a Legislature adopts the extraordinary procedure of providing, in place of the judicial tribunals, for the administration of property in which various interests are concerned, or enacts provisions

interfering with vested rights or existing obligations, a person desiring to object to the justice of the legislative measure should move with reasonable promptitude so as to avoid responsibility by delay or apparent acquiescence for any change in consequence of which disallowance might operate prejudicially to others, who, although not the promoters of the Act, may be affected by its operation or by the proceedings authorized thereby, and the undersigned is not satisfied that in the present case disallowance might not create considerable confusion and produce loss, hardship, or injustice not less than that which it might be designed to avoid or to remedy.

Chapter 32, intituled "An Act to provide for the Settlement of Differences between the Governments of the Dominion and the Province respecting Indian Lands and Indian Affairs in the Province of British Columbia." This Act, the nature of which is briefly described by its title, provides by section 3 authority to the Lieutenant-Governor in Council for the purpose of adjusting, readjusting, or confirming the reduction, cut-offs, and additions in respect of Indian reserves proposed in the report of the Commission, and to carry on such further negotiations and enter into such further agreements, whether with the Dominion Government or with the Indians, as may be found necessary for a full and final adjustment of the differences between the said Governments.

Upon this the undersigned observes that Indians and Indian reserves are committed by section 91 of the "British North America Act" to the exclusive legislative authority of the Dominion, and that if there be occasion for negotiations between the local authorities and the Indians with respect to reserves, these should be carried on through the Government of Canada, as representing the Indians, and not with the Indians directly, and that, in so far as it be the intent of this section to authorize direct negotiations upon the subject between the Lieutenant-Governor and the Indians, the Provincial Legislature is in the opinion of the undersigned incompetent to sanction such proceedings. The undersigned apprehends, however, that it should not be presumed and probably was not the intention that the negotiations in question should be carried on with the Indians otherwise than through the Government of the Dominion, with which their affairs are constitutionally charged.

The undersigned recommends that a copy of this report, if approved, be transmitted to the Lieutenant-Governor of the Province for the information of his Government.

Humbly submitted.

(Sgd.) CHAS. J. DOHERTY,
Minister of Justice.

VICTORIA, B.C.:
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1920.